

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

HYPERCUBE, LLC and KMC DATA, LLC	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 07-822-GMS
	)	
QWEST COMMUNICATIONS	)	<b>JURY TRIAL DEMANDED</b>
CORPORATION,	)	
	)	
Defendant.	)	

**PLAINTIFFS' WITHDRAWAL OF  
MOTION FOR TEMPORARY STAY; AND WITHDRAWAL OF PLAINTIFFS'  
OPPOSITION TO DEFENDANT'S MOTION FOR STAY PURSUANT TO THE  
COLORADO RIVER ABSTENTION DOCTRINE**

Plaintiffs HyperCube, LLC and KMC Data, LLC (together "Plaintiffs"), by and through counsel, hereby withdraw their pending Motion for Temporary Stay and their Opposition to Defendant's Motion to Stay Federal Proceedings Pending Resolution of Parallel State Court Action. Plaintiffs do so in light of recent rulings by a Colorado state trial court in a related litigation that render the above noted pleadings moot.

On February 15, 2008, Plaintiffs moved this Court to stay the instant proceedings pending a decision by a Colorado state court in a related litigation. Plaintiffs had requested that the Colorado court dismiss several of Qwest's federal claims and affirmative defenses. On March 28, 2008,<sup>1</sup> the Colorado state court denied Plaintiffs' motions. Accordingly, since the condition upon which Plaintiffs' motion to temporarily stay these proceedings was based has occurred, Plaintiffs' request for a temporary stay is now moot. Accordingly, Plaintiffs withdraw their motion for temporary stay.

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<sup>1</sup> Order, *Qwest Communications Corporation v. HyperCube, LLC and KMC Data, LLC*, Civil Action No. 06CV6404 (March 28, 2008).

Furthermore, Plaintiffs had opposed Qwest's motion for *Colorado River* abstention<sup>2</sup> in the instant proceeding, in part, because such relief was premature while the Plaintiffs' motions to dismiss remained pending before the Colorado state court. Qwest's motion for stay is now ripe. In light of the Colorado state court's decision to exercise jurisdiction over the federal claims before it, Plaintiffs withdraw their opposition to Qwest's motion for stay. Plaintiffs reserve the right, however, to contest any stay based on *Colorado River* should, during the course of the Colorado litigation, circumstances change such that the Colorado proceeding and this proceeding are no longer parallel, as the *Colorado River* Abstention Doctrine will then no longer apply and the stay must terminate.

Plaintiffs' do not, however, withdraw their opposition to Qwest's pending Motion to Dismiss Counts II, III, IV and V of Plaintiffs' Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) or Qwest's Motion to Transfer Proceeding to Colorado Pursuant to 28 U.S.C. § 1404. The Colorado state court decision did not form a basis for Plaintiffs' opposition to those motions. Accordingly, Plaintiffs' opposition to those motions is unaffected.

**CERTIFICATION PURSUANT TO LOCAL RULES 7.1.1**

Pursuant to the District of Delaware Local Rule 7.1.1, the undersigned counsel hereby certifies that Plaintiffs' counsel consulted with counsel for Defendant Qwest Communications Corporation with respect to this Withdrawal.

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<sup>2</sup> *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976).

Respectfully submitted:

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Dated: April 11, 2008  
859935 / 32559

By: /s/

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**CERTIFICATE OF SERVICE**

I, Richard L. Horwitz, hereby certify that on April 11, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on April 11, 2008, the attached document was Electronically Mailed to the following person(s):

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